IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Constitutional Petition No. S- 1558 of 2018

[M/s Super Coal Mines, Lakhra Coal Field Vs. Province of Sindh and others]

Petitioner:	Through Syed Zulfiqar Ali Shah, Advocate holding brief on behalf of petitioner's counsel.
Respondent:	Nemo

Date of hearing & order: 31.10.2022.

O R D E R

ADNAN-UL-KARIM MEMON, J.- Petitioner-M/s Super Coal Mines, Lakhra Coal Field, seeks cancellation of registration of union of respondent No.3, inter-alia on the ground that petitioner-company is a licensee for mining work; that mining work is done through third party Contractors as such there is no relationship of employer and employee between the parties, thus the registration of respondent-union by respondent No.2 is illegal and liable to be canceled in terms of Section 12 of Sindh Industrial Relations Act, 2012.

2. This petition is pending since 20.08.2018 without any progress. It appears that learned counsel for petitioner has shown appearance intermittently; today also he is not in attendance and on his behalf a brief is held by Syed Zulfiqar Ali Shah advocate; however, I have gone through the pleadings of the parties. The petitioner has taken grounds that the petitioner encourages healthy trade union activities for an effective and smooth working relationship but the misconception and wrong advice severally encouraged respondent No.3 to enter into several settlements as prescribed under the laws of Industrial Relations and the same practice was in full swing until the petitioner burdened heavy loss by charging exaggerated commission and recovered the same on the ground of having the work allegedly not being done but the contractor by way of personation as worker filed a case before Authority under Payment of Wages Act by way of fabricating the fact behind the recovery of commission made by the petitioner; that respondent No.3 merely a union of employees of Jamadar and the petitioner-management has no relationship with the said union or CBA, as such, its General Secretary Qamoos Gul Khattak was asked to immediately remove the name from the title of said union but no result came out.

3. Firstly, we take up the issue of maintainability of the captioned Constitutional petition raised by respondents in terms of Article 199(1) of the Constitution of the Islamic Republic of Pakistan, 1973. The above-referred Article lays down the first and foremost condition of absence of adequate remedy available under the law to the aggrieved person / party invoking constitutional jurisdiction of this Court. Therefore, the petitioner company must fulfill the said condition to establish locus standi. Besides the above, Article 199 of the Constitution, inter alia, provides that the High Court may exercise its powers thereunder only 'if it is satisfied that no other adequate remedy is provided by law'. It is well-settled that if there is any other adequate remedy available to the aggrieved person, he must avail and exhaust such remedy before invoking the constitutional jurisdiction of this Court, whether such remedy suits him or not. In my view, the doctrine of exhaustion of remedy envisaged in Article 199 prevents unnecessary litigation before the High Court, thus the writ jurisdiction cannot be invoked, ignoring the statutory dispensation under SERA-2013, as this Court is not a statutory forum of appeal against the order of Registrar in Industrial Relations hierarchy.

4. Primarily one of the reasons for introducing the doctrine of alternate remedy was to avoid and to reduce the number of cases that used to be filed directly before this Court and at the same time to follow the prescribed lower forum to exercise its jurisdiction freely under the law. Moreover, if a person moves this Court without exhausting the remedy available to him under the law at lower forum, not only would the purpose of establishing that forum be completely defeated, but such a person will also lose the remedy and the right of appeal available to him under the law. Under Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973, for determination of civil rights and obligations or in any criminal charge against him, every citizen is entitled to a fair trial and due process, therefore, it follows that fair trial and due process are possible only when the Court/forum exercises the jurisdiction strictly under the law. It further follows that this fundamental right of fair trial and due process in cases before this Court is possible when this Court exercises jurisdiction only in cases that are to be heard and decided by this Court and not in such cases where the remedy and jurisdiction to lie before some other forum. If the cases falling under the latter category are allowed to be entertained by this Court, the valuable fundamental right of fair trial and due process of persons/cases falling under the formal category certainly be jeopardized.

5. Prima-facie, the case of the petitioner-company appears to be premature at this point; and, the instant petition is not maintainable because the petitioner-company has approached this Court for the relief(s) as discussed supra in its writ jurisdiction without first availing and exhausting the remedy provided by law, besides, there is no distinction amongst the employees employed directly or through third party contractor in terms of definition clause 2 (xxxii) of the Sindh Industrial Act, 2012 and in section 3 of the Sindh Industrial Relations Act, 2012 as such the right of workman cannot be diminished until and unless it is shown contrary, for which petitioner has failed to point out.

6. Adverting to the main question involved in this matter as to whether the employees of labor contractor can be considered as employees of establishment where they work through labour contractor. Dealing with the aforesaid proposition, I seek guidance from the decision of Honorable Supreme Court in the case of *Fauji Fertilizer Company Ltd. through Factory Manager v. National Industrial Relations Commission through Chairman and others* (2013 SCMR 1253). The Honorable Supreme Court in the case of *Messrs. Sui Southern Gas Company Limited vs. Registrar Trade Unions and others,* (**2020 SCMR 638**), has held that the workers enlisted as voters are performing their duties and functions for the benefit of petitioner's establishment and are admittedly serving for many years. The purported arrangement/contract between the petitioner and their purported labor contractors cannot be allowed to be used as a device to deprive the said workers of their legitimate and fundamental right of forming a union and or become a part thereof.

7. Primarily the law on the subject is clear in its terms. The Honorable Supreme Court in the case of *M/s. Sui Southern Gas Company Limited Vs. Registrar of Trade Union & others* (**2020 SCMR 638) has** clarified the proposition in terms of section 19(4)(a) of the Industrial Relations Act, 2012, and held that every employer, on being required by the Registrar, is obliged to submit a list of all the workmen employed in his establishment, except those whose period of employment is less than three months, whereas Section 19(5) of IRA, 2012, requires the Registrar to include in the voter list the name of every workman, whose period of employment, computed under Sub-section (4) is not less than three months and is also not a member of any contesting trade union. It can thus be seen that the only requirement for the membership of a union, is being a workman, and for being registered as a voter, the period of employment of such workman in the establishment should not be less than three months. Whereas the term "worker" and "workman" has been defined by

section 2(xxxiii) of I.R.A., 2012, as a person not falling within the definition of employer, who is employed in an establishment, or industry for hire or reward, either directly or through a contractor.

8. It can therefore be seen that for an employee to fall under the definition of a worker or workman, it is wholly irrelevant whether he has been employed directly or through a contractor, and since in view of the relevant provisions of S.I.R.A., 2013, as noted above, there remains no ambiguity that the only requirement for an employee in an establishment to become a voter, is his being a worker or a workman, in such establishment for not less than three months and nothing more, therefore to say that since the workmen under discussion were engaged in the petitioner's establishment through some labor contractors, their registration/ enlistment as voters is violative of SIRA, is wholly misconceived and untenable.

9. In the light of above facts and circumstances of the case and the dicta laid down by Hon'ble Supreme Court of Pakistan in the case of Messrs. Sui Southern Gas Company Limited vs. Registrar Trade Unions and others (2020 SCMR 638), this petition is found to be misconceived and is dismissed along with listed application(s) with no order as to costs, leaving the petitioner at liberty to avail the remedy under the law.

JUDGE

Karar_Hussain/PS*